

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 47-010-08-1-5-00039
Petitioners: Rex A. & Janet S. Stroud
Respondent: Lawrence County Assessor
Parcel: 47-06-21-100-020.000-010
Assessment Year: 2008

The Indiana Board of Tax Review (Board) issues this determination in the above matter, finding and concluding as follows:

Procedural History

1. The Petitioners appealed the subject property's 2008 assessment. They initiated an assessment appeal with the Lawrence County Property Tax Assessment Board of Appeals (PTABOA) by written document dated September 2, 2009.
2. The PTABOA issued notice of its decision on February 26, 2010.
3. The Petitioners filed a Form 131 petition with the Board on March 30, 2010. On July 12, 2011, the Petitioners notified the Board of their desire to proceed according to small claims procedures. On July 14, 2011, the Board granted this request.
4. Administrative Law Judge Rick Barter held the Board's administrative hearing on August 2, 2011. He did not inspect the property.
5. Petitioner Rex A. Stroud, Lawrence County Assessor April Stapp Collins, and her technical advisor, Kirk Reller, were sworn as witnesses.

Facts

6. The subject property is a residential parcel located at 557 Bex Addition in Bedford.
7. The PTABOA determined that the 2008 assessment is \$9,200 for land and \$149,500 for improvements (total \$158,700).
8. The Petitioners claimed the assessment value should be \$9,000 for land and \$101,500 for improvements (total \$110,500).

Contentions

9. Summary of the Petitioners' case:

- a. The 2008 assessment is overstated compared to two comparable properties. The first comparable, located at 516 Bex Addition, has more than an acre of land, but the subject property has less than a half acre. This home is worth the same amount as the subject property, but it recently sold for \$50,000 less than the assessed value of the subject property. The second comparable, located at 532 Bex Addition, is assessed at \$80,000. *Stroud testimony.*
- b. The assessed value is too high because the property's neighborhood lacks amenities such as street lights, natural gas lines, and sewer lines. Further, a double-wide mobile home is located near the subject property and it is not well-maintained. These things diminish the value of the subject property. *Stroud testimony.*
- c. The Petitioners had the house built and they have lived there since November 2006. The value of the home has decreased considerably since then. (When asked what it cost to build, Mr. Stroud testified that he did not know.) *Stroud testimony.*
- d. The Petitioners are on a fixed retirement and have not had an increase in income since January 2009. The Petitioners would like to move, but the subject property cannot be sold because the property taxes are too high. *Stroud testimony.*
- e. The property tax bill went up to \$160 a month. Since property tax caps took effect it is down to \$145 a month. Many neighboring taxpayers saw a decrease in their property taxes, but the Petitioners' increased. Further, some senior citizens pay no property taxes. *Stroud testimony.*

10. Summary of the Respondent's case:

- a. The Petitioners rely on two purportedly comparable properties as well as their neighborhood's lack of amenities. The Petitioners have the burden of proving how this evidence relates to the market value-in-use of the subject property. They did not do so. *Reller argument.*
- b. The Petitioners failed to prove that the 2008 assessment is incorrect and what the value should be. *Reller argument.*
- c. Therefore, the Respondent's obligation to defend the assessment was not triggered because the Petitioners failed to present any objective evidence as to what a more accurate valuation would be. *Reller argument.*

Record

11. The official record is made up of the following:
 - a. The Petition,
 - b. Digital recording of the hearing,
 - c. Petitioner Exhibits – None,
 - d. Respondent Exhibit 1 – Form 130,
Respondent Exhibit 2 – Form 115,
Respondent Exhibit 3 – Property record card (PRC) for subject property,
Respondent Exhibit 4 – PRC for 516 Bex Addition,
Respondent Exhibit 5 – PRC for 532 Bex Addition,
Respondent Exhibit 6 – Data sheet for comparables,
Respondent Exhibit 7 – Witness list,
 - e. Board Exhibit A – Form 131 Petition and attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet,
 - f. These Findings and Conclusions.

Analysis

12. The Board is a creation of the legislature and it has only those powers conferred by statute. *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999). It determines appeals concerning the assessed value of tangible property, deductions, exemptions, and credits. Ind. Code § 6-1.5-4-1(a). It lacks authority to determine tax rates or tax bills. Any issue about what the amount of a tax bill should be is outside of the Board's jurisdiction. In addition, tax bills are determined by several factors. The testimony about other people having lower tax bills or not paying property tax at all is not probative evidence in regard to the assessed valuation of the subject property. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113, 1122 (Ind. Tax 1998).
13. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would be. *Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
14. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*,

802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).

15. The Petitioners did not make a case for any assessment change.
 - a. Real property is assessed based on its "true tax value," which means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach. *Id.* at 3. Indiana promulgated Guidelines that explain the application of the cost approach. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
 - b. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2008 assessment was January 1, 2007. 50 IAC 21-3-3. Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, the value as of that required valuation date. *Long*, 821 N.E.2d at 471.
 - c. Lack of neighborhood amenities and poorly kept neighboring homes might affect the market value-in-use of a property. Nevertheless, merely stating that these points cause a lower market value-in-use is not enough to require changing the assessment. Petitioners must prove how this situation affects the value of the subject property and offer probative evidence about what a more accurate valuation would be. *Talesnick v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). Mr. Stroud simply testified that these factors should result in a lower assessment value. Such conclusory statements are not probative evidence and they do not help prove an assessment must be changed. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - d. The Petitioners relied on a comparison approach to establish the value of their property. To effectively use a comparison, the proponent must establish the comparability of the properties being examined. Statements that properties are "similar" or "comparable" are merely conclusions and not probative evidence of comparability. *Long*, 821 N.E.2d at 470. Instead, the party relying on a comparison must identify the characteristics of the subject property and explain how those

characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 470-471. The proponent must explain how any differences between the properties affect their relative market value-in-use. *Id.* The Petitioners failed to establish a meaningful comparative analysis between the subject property and their comparables.

- e. Furthermore, comparing the assessed value of the subject property to one or two other assessments does not prove that the subject property's assessed value must be changed. *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007). In appealing an assessment a taxpayer must provide probative evidence that the assessed value does not accurately reflect market value-in-use. *Id.* The Petitioners failed to present probative evidence that the current assessment fails to accurately reflect the market value-in-use.
- f. When a taxpayer fails to provide probative evidence supporting the position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified*, 799 N.E.2d at 1221-1222; *Whitley Products*, 704 N.E.2d at 1119.

Conclusion

- 16. The Petitioners failed to make a prima facie case for any assessment change. The Board finds in favor of the Respondent.

Final Determination

In accordance with these findings of fact and conclusions of law, the assessment will not be changed.

ISSUED: _____

Commissioner, Indiana Board of Tax Review

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- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at: <http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.